

STEPHENS MEDIA, LLC d/b/a
HAWAII TRIBUNE-HERALD

Employer,

AND

**HAWAII NEWSPAPER GUILD,
LOCAL 39117,
COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO**

Union.

CASE NOS.	37-CA-7043
	37-CA-7045
	37-CA-7046
	37-CA-7047
	37-CA-7048
	37-CA-7084
	37-CA-7085
	37-CA-7086
	37-CA-7087
	37-CA-7112
	37-CA-7114
	37-CA-7115
	37-CA-7186

EXCEPTIONS TO THE RECOMMENDED DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

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COMES NOW, the Employer, Stephens Media, LLC, d/b/a Hawaii Tribune-Herald (hereafter “*Hawaii Tribune-Herald*”), pursuant to Section 102.46 of the National Labor Relations Board’s (“the Board”) Rules and Regulations, Series 8, as amended, files its exceptions to the March 6, 2008 decision of the Administrative Law Judge John J. McCarrick (“ALJ”) in NLRB Case No. 37-CA-7043 et al.

As specifically noted below, ALJ McCarrick’s rulings in favor of the charging party Hawaii Newspaper Guild (“Guild”) were incorrect, not supported by the record as a whole or the law, and should not be adopted by the Board.

Hawaii Tribune-Herald excepts:

1. To the Conclusions of Law (Dec. at 38: 15-50; 39: 1-19) as the Conclusions of Law are contrary to the evidence in the record as a whole and are contrary to law.
2. To the entire Order of the ALJ (Dec. at 39: 36-44; 40: 1-50; 41: 1-16).
3. To the Decision of the ALJ to grant the Motion in Limine of Counsel for the General Counsel. (ALJ Ex. 5).
4. To the Decision of the ALJ to reject exhibits of *Hawaii Tribune-Herald* in support of its Section 8(b)(3) defense. (R. Exs. 95, 110, 118, 121, 127, 134, 181, 192, 206, 208, 212, 213, 215, 235, 238, 242, 243, 246, 247-50, 251, 255, 363-370(rejected)).
5. To the finding that *Hawaii Tribune-Herald* had no policy requiring management approval for a non-employee union representative’s access to its facility (Dec. at 17: 32-33; Dec. at 21: 18-20; Dec. at 23: 7-8; Dec. at 28: 4-6), as this is contrary to the evidence in the Record as a whole.

6. To the failure to find that the Dixon February 17, 2004 letter to Cahill outlining the circumstances under which non-employee union representatives could have access to the premises constitute an agreement between *Hawaii Tribune-Herald* and Guild Local 39117. (G.C. Ex. 32).
7. To the failure to find that non-employee union representative Ken Nakakura knew that he needed management permission to access *Hawaii Tribune-Herald* premises and that he failed to do so on October 18, 2005. (Tr. 416, 962).
8. To the finding that the March 3, 2004 memo regarding *Hawaii Tribune-Herald's* Security Policy reflects ambiguity as to where non-employees other than customers can access *Hawaii Tribune-Herald's* facility (Dec. at 16: 20-21; Dec. at 17: 6-7, 33-34; Dec. at 21: 18-20; Dec. at 22: 22-23), as this is contrary to the evidence in the Record as a whole.
9. To the finding that the record establishes that *Hawaii Tribune-Herald's* employees regularly brought non-employees, including friends, family members and vendors, at all times of day, through the employee entrance without prior management permission, into *Hawaii Tribune-Herald's* newsroom – an open environment where supervisors were regularly present (Dec. at 4: 44-47; Dec. at 17: 17-21, 34-35; Dec. at 21: 20-23; Dec. at 22: 31-32) – as this finding is contrary to the evidence in the Record as a whole.
10. To the finding that supervisor Sledge gave approval for an employees' child to come into the *newsroom* on a regular basis after school (Dec. at 5: 1-2), as this finding is contrary to the evidence in the record as a whole.
11. To overruling an objection by *Hawaii Tribune-Herald* regarding an asked and answered question to Ing about where people were located in the *Hawaii Tribune-Herald* facility when they came to purchase photos. (Tr. 626).

12. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Smith about letting non-employees into the building. (Tr. 525)
13. To the finding that *Hawaii Tribune-Herald's* imposition of the requirement that only the Guild get prior management approval to access is contrary to its own security, amounting to a discriminatory enforcement of the Security Policy (Dec. at 22: 23-25, 32-35, 30-31; Dec. at 23: 8-9) in violation of Section 8(a)(1) of the Act, as this is contrary to the evidence in the Record as a whole and contrary to law.
14. To the failure to find that the allegations of the Complaint concerning the October 18, 2005 violation of this agreement between *Hawaii Tribune-Herald* and Guild Local 39117 were time barred by Section 10(b) of the Act.
15. To the finding under *The Register-Guard*, 351 NLRB No. 70 (2007), that *Hawaii Tribune-Herald* has unlawfully discriminated against the Guild (Dec. at 22: 27-28), as this is contrary to the evidence in the Record as a whole and contrary to law.
16. To the failure to find that the matter of law that *Hawaii Tribune-Herald's* policy with respect to non-employee union representatives access of the premises as described in Dixon's February 17, 2004 letter is a valid non-discriminatory policy with a meaning of *The Register-Guard*, 351 NLRB No. 70 (December 16, 2007).
17. To the failure to find that Guild Local 39117 was treated no differently than any other outside third party non-employee organization concerning access to the premises.
18. To the finding that *Hawaii Tribune-Herald's* written warning to Nako violated 8(a)(1) and (3) of the Act (Dec. at 28: 7-8), as it is contrary to law.
19. To the failure to find that David Bock October 18, 2005 meeting with Koryn Nako was just informational, to clarify policy. (G.C. Ex. 6).

20. To the finding that Bock had no valid basis for questioning Nako about why she had allowed union representative Nakakura into *Hawaii Tribune-Herald's* facility (Dec. at 17: 23-28, 31-32; Dec. at 23: 33-35), as it is contrary to the evidence in the Record as a whole and contrary to law.
21. To the finding that Nako assumed it was okay for Nakakura to enter the *Hawaii Tribune-Herald* facility (Dec. at 5: 11), as that is contrary to the evidence in the record as a whole.
22. To the finding that Bock's inquiry on October 18, 2005 was an unwarranted interrogation aimed at discovering Nako's union activity in violation of Section 8(a)(1) of the Act (Dec. at 17: 36-39), as this is contrary to the evidence in the Record as a whole and contrary to law.
23. To overruling an objection by *Hawaii Tribune-Herald* based on an irrelevant or asked and answered question to Nako regarding what was said in the October 18, 2005 meeting between Bock and Nako. (Tr. 223, 385).
24. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Bock was talking to Nako about R. Ex. 330, because it went to Bock's objective state of mind. (Tr. 292, 293).
25. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Nako about her understanding of whether Bock was stating a policy regarding union access on October 18, 2005. (Tr. 385).
26. To overruling an objection by *Hawaii Tribune-Herald* based on a leading question to Nako regarding whether "anything else out of the ordinary" happening on October 19, 2005. (Tr. 232).
27. To overruling an objection by *Hawaii Tribune-Herald* based on a leading question to Nako regarding whether Nako mentioned the term "union activities" during her October 18, 2005

meeting with Bock (Tr. 226), and to then not permitting a line of questioning regarding Nako's understanding of what union business means. (Tr. 360, 361).

28. To the finding that Crawford's interrogation of Nako on October 21, 2005 has as its object the discovery of her and others' union activity and is prohibited by Section 8(a)(1) of the Act (Dec. at 23: 9-11), as this is contrary to the evidence in the Record as a whole and contrary to law.
29. To the finding that the first time Nako became aware of the Union Access Policy was during the October 18, 2005 meeting with Bock (Dec. at 6: 22), as that is contrary to the evidence in the record as a whole.
30. To overruling an objection by *Hawaii Tribune-Herald* based on an asked and answered question to Nako regarding what was said at the end of her meeting with Crawford on October 21, 2005. (Tr. 257).
31. To the finding that Smith said the memo (R. Ex. 330) said nothing about union officials (Dec. at 5: 41-43), as that is contrary to the evidence in the Record as a whole.
32. To the finding that Crawford asked what the note was about and Nako asked, "Do I have to tell you?" to which Crawford replied, "Yes, if it was regarding Union business" (Dec. at 6: 13-15), as this finding is contrary to the evidence in the Record as a whole.
33. To the finding that as a result of Crawford and Bock's alleged unlawful interrogation, Crawford and Bock discovered that Nako's purpose in allowing Nakakura into *Hawaii Tribune-Herald's* facility was to give him a note that dealt with Guild business (Dec. at 28: 2-4), as this is contrary to the evidence in the Record as a whole and contrary to law.
34. To the finding that there was no valid basis for *Hawaii Tribune-Herald's* discipline of Nako and that the real reason for the discipline was her union activity (Dec. at 28: 6-8) in violation

of Section 8(a)(1) and (3) of the Act, as this is contrary to the evidence in the Record as a whole and contrary to law.

35. To overruling an objection by *Hawaii Tribune-Herald* based on an irrelevant question to Nako regarding her understanding as to where Guild officials were allowed. (Tr. 255).
36. To overruling an objection by *Hawaii Tribune-Herald* regarding a non-responsive answer by Cahill about what happened on October 26, 2005. (Tr. 723).
37. To overruling an objection by *Hawaii Tribune-Herald* based on a Section 10(b) time-barred question to Nako regarding when Nako had been notified that the Guild filed a grievance on her behalf. (Tr. 265).
38. To striking from the record Crawford's comment that interrogating Nako would be goofy. (Tr. 1204).
39. To overruling an objection by *Hawaii Tribune-Herald* based on a leading and asked and answered question to Nako regarding whether Crawford said anything about the union's actions in an alleged January 2006 meeting. (Tr. 269-270).
40. To overruling an objection by *Hawaii Tribune-Herald* based on a hearsay question to Nako regarding what Crawford said in an alleged February 2006 meeting. (Tr. 271).
41. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether anyone has been disciplined for informational picketing (Tr. 361-362), or if *Hawaii Tribune-Herald* has ever made any efforts to interfere with any informational picketing because it had been asked and answered. (Tr. 362).
42. To overruling an objection by *Hawaii Tribune-Herald* regarding an asked and answered question to Nako about whether she knew the day Bishop was terminated. (Tr. 397).

43. To overruling an objection by *Hawaii Tribune-Herald* based on a hearsay question to Nakakura regarding hearsay as to Nakakura's conversation with Maeda. (Tr. 413).
44. To the finding that Crawford's February 2006 inquiry into the Guild's handling of her grievance is an unwarranted attempt to discover Nako's union activity in violation of Section 8(a)(1) of the Act (Dec. at 23: 35-37), as this is contrary to the evidence in the Record as a whole and contrary to law.
45. To the finding that in early January 2006, Crawford wanted to be sure Nako was aware the Guild had filed a grievance on her behalf concerning her warning (Dec. at 6: 30-31), as this is contrary to the evidence in the Record as a whole.
46. To the finding that Crawford's testimony about the early January 2006 testimony amounted merely to a "claim", (Dec. at 6: 51), as this is contrary to the evidence in the Record as a whole.
47. To the finding that Crawford and Nako met in early February 2006 so Crawford could tell Nako that he had spoken with Cahill and wanted to know why the Guild was pursuing Nako's grievance if she acknowledged responsibility (Dec. at 6: 35-37; Dec. at 7: 48-50), as this finding is contrary to the evidence in the Record as a whole.
48. To the finding that Crawford asked a series of questions to Nako in the alleged February 2006 meeting Nako about the Guild's filing of a grievance (Dec. at 6: 37-38; Dec. at 7: 1-2; Dec. at 23: 26-31), as this is contrary to the evidence in the Record as a whole.
49. To the finding that Nako's testimony was more believable and credible, whereas neither Bock nor Crawford were credible (Dec. at 5: 46-49, Dec. at 6: 43-49; Dec. at 7: 48-51), as this finding is contrary to the evidence in the Record as a whole.

50. To the finding that Bishop was terminated for engaging in protected/concerted and union activities (Dec. at 32: 14-15), as this is contrary to the evidence in the Record and contrary to law.
51. To the failure to find that Hunter Bishop was discharged for cause within the meaning of Section 10(c) of the Act.
52. To the failure to find that *Hawaii Tribune-Herald* had cause to discharge Hunter Bishop for poor story productivity learned about after his discharge, especially in view of the unrebutted facts that Bishop had been warned and suspended twice before for poor story productivity. (R. Ex. 321, 322).
53. To the finding that Bishop was engaged in protected/concerted activity in his capacity as Union representative while seeking to be present during what turned out to be a *Weingarten* Investigatory Meeting (Dec. at 28: 29-30, 31-32, 35-36), as this is contrary to the evidence in the Record as a whole and the Complaint does not allege a *Weingarten* allegation. (G.C. Ex. 1(z)).
54. To the finding that the meeting between Bock and Nako on October 18, 2005 proved to be an investigative meeting that led to her discipline (Dec. at 30: 3-4, 6-7), as this is contrary to the evidence in the Record as a whole and contrary to law.
55. To the finding that there is evidence that Bishop's comments and conduct were provoked by unfair labor practices (Dec. at 30: 7-8), as this is contrary to the evidence in the Record as a whole and contrary to law.
56. To the finding that Nako indicated she wanted Bishop present in her meeting with Bock (Dec. at 28: 30-31), as this is contrary to the evidence in the Record as a whole.

57. To the failure to find that at no time on October 18, 2005 did Koryn Nako request of Editor David Bock that she be allowed a *Weingarten* representative in the meeting she had with Bock. (G.C. Ex. 6; Tr. 972).
58. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Nako was acting like Bishop during Bishop's confrontation with Bock as vague and ambiguous. (Tr. 318).
59. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Nako wanted Bishop to go away based on the words Nako used. (Tr. 320).
60. To the finding that the weight of the evidence reflects Bishop was simply being a forceful advocate of Nako (Dec. at 7-8: 46, 1), as this is contrary to the evidence in the Record as a whole and contrary to law.
61. To the finding that Bishop did not force his way into the meeting between Bock and Nako, and accepted his exclusion (Dec. at 29: 40-42), as this is contrary to the evidence in the Record as a whole.
62. To the finding that Bock told Bishop that Bock's meeting with Nako was "none of your business" or "does not involve you" because it was just a discussion (Dec. at 7: 10-14), as this is contrary to the evidence in the Record as a whole.
63. To the finding that Bishop was speaking in a normal tone of voice and not yelling (Dec. at 7: 15-16, 19-21), as this is contrary to the evidence in the Record as a whole.
64. To the finding that Bishop's tone of voice was forceful and even raised with Bock, but that Bishop did not yell or threaten Bock (Dec. at 29: 48-50), as this is contrary to the evidence in the Record as a whole.

65. To the finding that the witnesses who testified that at no time did Bishop yell at Bock were credible (Dec. at 8: 1-3), as this is contrary to the evidence in the Record as a whole.
66. To the failure to find that Hunter Bishop was at one point yelling at David Bock on October 18, 2005 in the newsroom in the presence of other employees, including Meg Premo. (Tr. 890-91, 939, 971, 1089-90).
67. To the finding that it is inconceivable that Sledge would not have heard the exchange between Bishop and Bock from her office (Dec. at 7: 39-41), as this is contrary to the evidence in the record as a whole.
68. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading and testifying on behalf of the witness question to Ing about how far Bishop proceeded through the newsroom in his confrontation with Bock. (Tr. 645).
69. To overruling an objection by *Hawaii Tribune-Herald* regarding a question beyond the scope to Ing about anything else happening on October 18, 2005, in addition to Ing's direct testimony. (Tr. 647).
70. To overruling an objection by *Hawaii Tribune-Herald* regarding a non-responsive answer by Ing about Bishop's facial expressions during his confrontation with Bock. (Tr. 608).
71. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading and testifying on behalf of witness question to Ing about what Bock said to Bishop. (Tr. 608).
72. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding Nako's testimony to Mr. Ing because it would have revealed testimony to the witness. (Tr. 648).
73. To the finding that the overall record does not demonstrate that Bishop's conduct on October 18, 2005 was so egregious or opprobrious to be considered indefensible and remove his

conduct from protection of the Act (Dec. at 30: 10-11, 13-15), as this is contrary to the evidence in the Record as a whole and contrary to law.

74. To the failure to find that the totality of Hunter Bishop's conduct on October 18, 2005 constituted insubordination to the failure of the ALJ to consider Hunter Bishop's suspension and discharge in the context of Hunter Bishop's disciplinary record; to the failure to consider the documentary evidence of this disciplinary record included but not limited to many arbitration awards. (R. Ex. 317, 318, 319, 320, 321, 322).
75. To the finding that there is no evidence newsroom employees were prevented from performing their jobs as a result of this incident (Dec. at 28: 35-36), as this is contrary to the evidence in the Record as a whole
76. To overruling an objection by Zinser regarding a mischaracterizing question to Bock regarding progressive discipline stages. (Tr. 58).
77. To the finding that Bishop received a voicemail on October 25, 2005 from Bock stating Bock wanted to see Bishop (Dec. at 8: 12-13), as this is contrary to the evidence in the Record as a whole.
78. To the finding that Bishop called Bock and left a message for Bock (Dec. at 8: 13), as this is contrary to the evidence in the Record as a whole.
79. To the finding that Bock called Bishop back, twenty (20) minutes later saying he wanted to see Bishop at 6:00pm that evening (Dec. at 8: 13-15), as this is contrary to the evidence in the Record as a whole.
80. To the finding that Bishop said to Bock that it was not convenient to come to the office since he was at home, 25 miles away (Dec. at 8: 15-16), as this is contrary to the evidence in the Record as a whole.

81. To the finding that Bock told Bishop to come to the office at 6:30 (Dec. at 8: 16), as this is contrary to the evidence in the Record as a whole.
82. To the finding that Bishop said he would see Bock the next day (October 26, 2005) (Dec. at 8: 17-18), as this is contrary to the evidence in the Record as a whole.
83. To rejecting R. Ex. 361 (Bishop e-mail re competing newspaper) because it allegedly did not go to the issue of disloyalty. (Tr. 1271, 1272).
84. To rejecting R. Ex. 360: E-mail from Bishop to Cahill dated October 19, 2005, rejected on October 31, 2007 because it was allegedly irrelevant. (Tr. 1279).
85. To the finding that *Hawaii Tribune-Herald* was well aware of Bishop's productivity at the time he was discharged and did not find it as a basis for his termination (Dec. at 30: 46-49), as this is contrary to the evidence in the Record as a whole.
86. To the finding that Bishop's low productivity after his termination is a belatedly discovered pretext for Bishop's discharge (Dec. at 31: 1-2), as this is contrary to the evidence in the record as a whole and contrary to law.
87. To the finding that there is no evidence that Bishop's comments at the University of Hawaii or in his blog were maliciously false (Dec. at 32: 16-18), as this is contrary to the evidence in the Record as a whole and contrary to law.
88. To the finding that Bishop's blog comments do not rise to the level of disparagement that the Board has found to justify termination, as they are not maliciously false or disparaging of *Hawaii Tribune-Herald's* product as to cause an undermining of its reputation, amounting to no more than literary criticism (Dec. at 32: 19-22), as this is contrary to the evidence in the Record as a whole and contrary to law.

89. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Bishop uses his blog to pick on *Hawaii Tribune-Herald* because it was argumentative. (Tr. 188; R. Ex. 292, 294, 300).
90. To the finding that there is no post-termination justification for denying Bishop's reinstatement (Dec. at 32: 24), as this is contrary to the evidence in the Record as a whole and contrary to law.
91. To overruling an objection by *Hawaii Tribune-Herald* based on a question to Bishop regarding the situation that led to the suspension at issue in R. Ex. 14 because ALJ McCarrick was not bound by an arbitrator decision. (Tr. 202).
92. To overruling an objection by *Hawaii Tribune-Herald* based on a question to Bishop regarding the effect of Arbitrator Zigman's decision. (Tr. 203).
93. To overruling an objection by *Hawaii Tribune-Herald* based on a question to Bishop regarding whether Arbitrator Perea's October 17, 2003 decision could be considered in the future by the employer when the Best Evidence Rule should have governed this question. (Tr. 205).
94. To the failure to credit Meg Premo's account of Hunter Bishop's confrontation of David Bock in the newsroom in front of others because the events occurred within a couple of feet of her desk and she had a full view of the confrontation; there was no partition blocking her view. (Tr. 895-896).
95. To the finding that Meg Premo was not a credible witness due to her affected voice and overly dramatic, inconsistent testimony (Dec. at 7: 29-30), as this is contrary to the evidence in the Record as a whole.

96. To the finding that Premo had anti-union sentiments as reflected in her *Beck* objector status, making her a biased witness (Dec. at 7: 31-32), as this is contrary to the evidence in the record as a whole and contrary to law.
97. To sustaining an objection to a question by *Hawaii Tribune-Herald* regarding Premo's reaction to witnessing the Bishop and Bock confrontation on October 19, 2005 as irrelevant. (Tr. 901).
98. To the ALJ's finding that a shoulder-high partition would have blocked Meg Premo's view of the Bishop confrontation on October 18, 2005 as this findings is contrary to the evidence in the record as a whole. (Tr. 895-896).
99. To overruling an objection by *Hawaii Tribune-Herald* based on a question to Premo regarding her *Beck* objector status finding that the question went to prejudice and bias. (Tr. 904).
100. To overruling an objection by *Hawaii Tribune-Herald* based on an asked and answered question to Premo regarding what she heard Bishop say. (Tr. 912).
101. To sustaining an objection based on a question asked by *Hawaii Tribune-Herald* to Bishop regarding who participated in the drafting of GC Ex. 4 finding that if Bishop had a part in it, there is a sufficient basis to lay a foundation. (Tr. 88).
102. To the finding that *Hawaii Tribune-Herald* violated 8(a)(1) and (5) of the Act by refusing to furnish the information requested by the Guild in its October 15, November 3 and November 15, 2005 written requests and in its oral request of November 15, 2005 (Dec. at 38: 9-11), as this finding is contrary to the evidence in the Record as a whole and contrary to law.

103. To the finding that it is not for *Hawaii Tribune-Herald* to decide what is necessary and relevant to the Guild's duty as collective bargaining representative (Dec. at 38: 1-2), as that is contrary to the evidence in the Record as a whole and contrary to law.
104. To the finding that the Guild's right to relevant information is not defeated merely because it might have acquired the information by its own means (Dec. at 38: 2-4), as this finding is contrary to law.
105. To the finding that the Board has adopted a liberal definition of relevancy, requiring only that the information be directly related to the union's duty as a bargaining representative (Dec. at 38: 4-6), as this finding is contrary to law.
106. To the finding that information must be disclosed unless it is plainly irrelevant (Dec. at 38: 6-7), as it is contrary to law.
107. To the finding that the information requested by the Guild in its written requests of October 15, November 3, and November 15, 2005 were relevant and necessary to the Guild's duty as collective bargaining representative (Dec. at 35: 26-28), as such a conclusion is contrary to the evidence in the Record as a whole and contrary to law.
108. To the finding that the *Hawaii Tribune-Herald's* failure to produce the names of the witnesses and employees interviewed in the Bishop investigation was a violation of Section 8(a)(5) of the Act (Dec. at 36: 18-19, 24-25), as such a finding is contrary to the evidence in the Record as a whole and contrary to the law.
109. To the finding that the case law relied upon by *Hawaii Tribune-Herald* regarding disclosure of witness statements was distinguishable (Dec. at 36: 8-9), as that is contrary to the evidence in the Record as a whole and contrary to the law.

110. To the finding that Nako's statement is not protected by either work-product privilege or under the holding in *Anheuser-Busch, Inc.*, 237 NLRB 982, 984 (1978), because no assurances of confidentiality were given to her (Dec. at 36: 14-16, 45-46) as that is contrary to the evidence in the Record as a whole and contrary to the law.
111. To the finding that any other employee statements or information provided to the extent they were not provided assurances of confidence or did not adopt their statement were not protected and must be provided to the Guild (Dec. at 36: 16-18), as that finding is contrary to the evidence in the Record as a whole and contrary to the law.
112. To the finding that the Guild's November 3, 2005 request for the names of witnesses and employees interviewed in the Bishop investigation is presumptively relevant (Dec. at 36: 21-23), as that is contrary to the evidence in the Record as a whole and contrary to law.
113. To the finding that *Hawaii Tribune-Herald* failed to provide the information considered by *Hawaii Tribune-Herald* in making its decision to discipline Bishop, what Bishop did that cause *Hawaii Tribune-Herald* to suspend and terminate him, copies of the policies Bishop violated, the names of employees who witnessed the event, the name of employees *Hawaii Tribune-Herald* interviewed in the course of any investigation in the Bishop discipline and the information the employee provided, Bishop's personnel file, what Bishop did or said that was disrespectful to supervisory authority, what Bishop did or said that that was insubordinate, what Bishop did or said that interfered with *Hawaii Tribune-Herald* right to meet with one of its employees, Nako's statement given to *Hawaii Tribune-Herald* and any material *Hawaii Tribune-Herald* considered in disciplining her (Dec. at 37: 43-51), as this finding is contrary to the evidence in the Record as a whole and contrary to law.

114. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding what facts Cahill told *Hawaii Tribune-Herald* he had relied on in coming to the position that Bishop had not been disrespectful to Bock because it went to pre-arbitration discovery issues. (Tr. 830).
115. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill was aware of *Hawaii Tribune-Herald's* expectations of civility and professionalism finding the question to be irrelevant. (Tr. 846, 847).
116. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding Cahill conducting his own investigation of Bishop's suspension and the Guild's attempt at pre-arbitration discovery. (Tr. 773).
117. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill said that Bishop had not been disrespectful to Bock because there was no Section 8(b)(3) claim at issue. (Tr. 830).
118. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding Bishop's behavior as the basis for the company's claim of misconduct because it was irrelevant. (Tr. 832).
119. To sustaining an objection by *Hawaii Tribune-Herald* regarding whether Cahill told Bock that the failure to answer Cahill's question would mean certain evidence would be precluded at the arbitration. (Tr. 769).
120. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding the bona fides of the grievance because that was not an issue to ALJ McCarrick. (Tr. 766).

121. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding the Guild's conduct at the November 15, 2005 JCAC meeting as strategy to contest Bishop's termination because it went to pre-arbitration discovery. (Tr. 775).
122. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Bishop's suspension and termination could have been arbitrated because it went to a legal conclusion and the ALJ had ruled on it pre-hearing. (Tr. 834).
123. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether anyone helped Cahill draft the charge involving Bishop's suspension and termination because it was irrelevant. (Tr. 780).
124. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding Cahill's demeanor during the November 15, 2005 JCAC meeting because it was prejudicial and irrelevant. (Tr. 998, 999).
125. To sustaining objections based on questions by *Hawaii Tribune-Herald* regarding whether the November 15, 2005 JCAC meeting was different than previous grievance meetings. (Tr. 1189-1192).
126. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill made a statement regarding failure to respond to his questions leading to evidence being precluded at arbitration finding it irrelevant. (Tr. 769).
127. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Bock asked Cahill to put questions in writing as irrelevant and a waste of time. (Tr. 777).
128. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill ever filed an unfair labor practice over GC Ex. 32 as irrelevant. (Tr. 844).

129. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether *Hawaii Tribune-Herald* has ever been found to have violated the National Labor Relations Act as irrelevant. (Tr. 779).
130. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill filed a charge involving Nako as irrelevant. (Tr. 788).
131. To overruling an objection by *Hawaii Tribune-Herald* regarding a question lacking foundation to Cahill about information requests regarding Nako. (Tr. 723)
132. To rejecting R. Ex. 91 (Letter from Cahill to Crawford dated January 14, 2006), rejected on October 26, 2007, because it went to pre-arbitration discovery. (Tr. 790).
133. To the finding that the Union was not yet in possession of the information to make a decision whether to pursue a grievance or arbitration when Nako created her statement on 10/19/05 (Dec. at 36: 41-44), as that is contrary to the evidence in the Record as a whole. (R. Ex. 360, Tr. 825-28).
134. To the finding that on October 19, 2005, there was no subjective or objectively reasonable possibility that the union would request arbitration (Dec. at 36: 44-45), as that is contrary to the evidence in the Record and contrary to law. (G.C. Ex. 20).
135. To the finding that when the Guild made its information requests, they could not have been requests for pre-arbitration discovery (Dec. at 37: 19-20), as this finding is contrary to the evidence in the Record as a whole and contrary to law.
136. To the finding that the delay in furnishing the Bishop personnel file was unreasonable (Dec. at 37: 34-35) and a violation of Section 8(a)(1) and (5) of the Act, as that finding is contrary to the evidence in the Record as a whole and contrary to law.

137. To the finding that *Hawaii Tribune-Herald's* explanation regarding furnishing the Bishop personnel file to the Guild was "vague and unsupported" (Dec. at 37: 33-35), as such a finding is contrary to the evidence in the Record as a whole.
138. To the finding that Bock told Cahill that he (Bock) was not going to give the union any minutiae that would be presented in the arbitration (Dec. at 14:17-18), s this is contrary to the evidence in the Record as a whole.
139. To the finding that the ALJ would not permit an exhaustive examination of a witness concerning their subjective intent, concerning whether they were acting in good faith in filing a grievance; or to specific questions concerning whether the Guild already had information. (Tr. 811).
140. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill understood why Nako was disciplined as irrelevant. (Tr. 834- 835).
141. To the failure to find as a matter of law that an employee's surreptitiously tape recording his/her supervisor in the workplace is not protected activity.
142. To the finding that Smith's secret recording of the Bock meeting is protected/concerted activity because it was group action for the purpose of mutual aid and protection, namely safeguarding employees' *Weingarten* rights (Dec. at 19: 32-33; Dec. at 27: 14-16; Dec. at 33: 27-28), as this is contrary to the evidence in the Record as a whole and contrary to law.
143. To the finding that there is nothing improper per se about making a surreptitious recording (Dec. at 19: 31-32), as this is contrary to law.
144. To the failure to find that Dave Smith's surreptitious tape recording of David Bock in the workplace was insubordination under the facts of this case.

145. To the finding that cases cited by *Hawaii Tribune-Herald* that secret recording is unprotected activity, such as *Dana Corp.*, 318 NLRB 312 (1995) and *Sam's Club*, 342 NLRB 620 (2004), are inapposite (Dec. at 19: 21-28), as this finding is contrary to law.
146. To the finding that the production of the tape/memory stick/recorder is not relevant. (Tr. 806, 807, 820).
147. To the finding that Smith, Sur, Ing and Loos were engaged in concerted activity on March 3, 2006, by agreeing in concert before Smith made the secret recording that Smith should tape the meeting to protect not only his but other employees' *Weingarten* rights. (Dec. at 18: 28-29; Dec. at 19: 1-2; Dec. at 33: 5-8, 27-28), as this is contrary to the evidence in the Record and contrary to law.
148. To the finding that the employees reasonably believed that the meeting was an investigatory one leading to discipline (Dec. at 18: 40-42), as this is contrary to the evidence in the Record as a whole and contrary to law as the Complaint alleges no *Weingarten* violation.
149. To the finding that the reasonableness of the employees' belief is supported by the fact that the meeting digressed into a discussion of the accuracy of *Hawaii Tribune-Herald's* calculation of Smith's productivity (Dec. at 18: 42-45), as this is contrary to the evidence in the Record as a whole.
150. To the finding that Bock told Smith that he was only giving Smith a verbal warning because he had been cooperative at a previous meeting regarding Smith's productivity (Dec. at 10: 30-31), as that is contrary to the evidence in the record as a whole.
151. To the finding that Smith was not acting on his own behalf but in concert with four other employees to safeguard their *Weingarten* rights (Dec. at 18: 37-39), as this is contrary to the

evidence in the Record as a whole and contrary to law; the Complaint alleges no *Weingarten* violation.

152. To the finding that Bock left open further investigation into Smith's productivity (Dec. at 18: 45-46), as this is contrary to the evidence in the Record as a whole.
153. To the finding that the Board held in *Becker Group, Inc.*, 329 NLRB 103 (1999) where an employer informs an employee of a disciplinary action and then questions the employee to seek information to bolster that decision, the employee's right to representation applies (Dec. at 18: 46-49), as this is contrary to the evidence in the Record as a whole and contrary to law.
154. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether there has been a decision by the NLRB finding that *Hawaii Tribune-Herald* has violated the NLRA. (Tr. 1074, 1075).
155. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding an arbitrator has ever issued an award that *Hawaii Tribune-Herald* has disciplined or discharged an employee for engaging in union activity as irrelevant. (Tr. 1075).
156. To overruling an objection by *Hawaii Tribune-Herald* regarding an irrelevant question to Bock regarding Smith's story count. (Tr. 1109).
157. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill has ever secretly recorded a conversation as irrelevant. (Tr. 841).
158. To overruling objections by *Hawaii Tribune-Herald* regarding questions to Cahill about what Cahill and Smith believed during a conversation with Smith on March 3, 2006. (Tr. 727-729).
159. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Cahill about whether the tape recording came up in Cahill's phone call with Bishop. (Tr. 731).

160. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Cahill about whether policies were discussed during the March 27, 2006 meeting with Bock, Crawford, Cahill and Smith. (Tr. 747).
161. To the failure to find that Editor David Bock, upon receiving an allegation from a unit employee that he had been secretly tape recorded by Dave Smith, legitimately conducted an investigation into the misconduct represented by the secret taping.
162. To the finding that *Hawaii Tribune-Herald's* investigation into Smith's protected activity was improper (Dec. at 33: 39-40), as this is contrary to law.
163. To the finding that *Hawaii Tribune-Herald* failed to make reasonable efforts to circumscribe its questioning of Smith, Sur, Ing and Loos, to avoid unnecessarily prying into the employee's union and protected/concerted activities (Dec. at 20: 38-41), as this is contrary to the evidence in the Record as a whole and contrary to law.
164. To the finding that *Hawaii Tribune-Herald* failed to clearly communicate to Smith, Sur, Ing and Loos the limitations on the employer's inquiry (Dec. at 20: 40-42), as this is contrary to the evidence in the Record as a whole and contrary to law.
165. To the finding that respondent engaged in interrogation of Smith, Sur, Ing, and Loos designed to discover who was engaged in protected/concerted activity in violation of Section 8(a)(1) (Dec. at 20: 33-38, 40-45), as this is contrary to the evidence in the Record as a whole and contrary to law.
166. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Sur about any discussion of the recording itself or the making of the recording. (Tr. 586).
167. To overruling objections by *Hawaii Tribune-Herald* regarding questions beyond the scope during Sur's testimony examination. (Tr. 595-598).

168. To the finding that the questions Bock put to Smith were designed to elicit information concerning his and others protected/concerted activity, in violation of 8(a)(1) (Dec. at 21: 6-8), as that is contrary to the evidence in the Record as a whole and contrary to law.
169. To the finding that Bock asked Smith why Smith didn't ask permission to record the meeting (Dec. at 11: 11-13), as that is contrary the evidence in the record as a whole.
170. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question and non-responsive answer by Smith about a discussion of *Weingarten* on March 9, 2006. (Tr. 503).
171. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Smith about how the recording came about. (Tr. 504).
172. To overruling an objection by *Hawaii Tribune-Herald* regarding a leading question to Smith about what Bock asked Smith on March 9, 2006. (Tr. 505: 10-11).
173. To overruling an objection by *Hawaii Tribune-Herald* regarding an asked and answered question to Smith about any additional reasons why Smith recorded the meeting. (Tr. 507).
174. To sustaining an objection based on questions by *Hawaii Tribune-Herald* regarding whether Dave Smith assumed, after Sur got a witness to his March 9, 2006 meeting, that Sur told Bock about the recorder which were considered speculative. (Tr. 541).
175. To overruling a request by *Hawaii Tribune-Herald* to have Ing testify about the tape recording on March 3, 2006, based on Ing's recollection, rather than with GC Ex. 11 on display. (Tr. 610).
176. To the finding that Ing met with Bock and Palmer after Smith (Dec. at 11: 18-20), as that is contrary to the evidence in the Record as a whole.

177. To overruling an objection by *Hawaii Tribune-Herald* regarding an asked and answered question to Ing about what Ing told Bock regarding concealing the recorder on March 9, 2006. (Tr. 620: 14-18).
178. To overruling an objection by *Hawaii Tribune-Herald* regarding a non-responsive question by Ing about how Bock found out about the recording. (Tr. 623).
179. To the finding in response to whether Ing had offered any advice to Smith, Ing replied that he was frustrated and did not understand *Weingarten* rights (Dec. at 11: 22-23), as this is contrary to the evidence in the Record as a whole.
180. To overruling an objection by *Hawaii Tribune-Herald* based on an asked and answered question to Marie Ella-Burns regarding whether Palmer did anything during the meeting with Bock, Palmer and Ing on March 9, 2006. (Tr. 863).
181. To overruling an objection by *Hawaii Tribune-Herald* regarding a hearsay question to Cahill about his phone call with Bishop regarding the March 9, 2006 meetings between Bock and the four employees interviewed. (Tr. 731).
182. To the finding that Loos followed Ing as the last person in the series of interviews on March 9, 2006 (Dec. at 24: 25-27), as this is contrary to the evidence in the Record as a whole.
183. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Bock told Loos that secret taping was unacceptable as leading. (Tr. 1040).
184. To the finding that Bock asked Loos if she was aware of wiretapping laws (Dec. at 11: 28), as this is contrary to the evidence in the Record as a whole.
185. To the finding that Bock said to Loos that Loos, Ing, Sur and Smith conspired to be disloyal (Dec. at 11: 35-36), as this is contrary to the evidence in the Record as a whole.

186. To the finding that Sur was additionally engaged in union activities in attempting to insure other employees' right to a union representative in a *Weingarten* interview (Dec. at 33: 9-10), as this is contrary to the evidence in the Record as a whole and contrary to law.
187. To the finding that in suspending Sur for engaging in secret recording of the Bock-Smith meeting on March 3, 2006, *Hawaii Tribune-Herald* discriminated against Sur for engaging in protected/concerted and union activity in violation of Section 8(a)(1) and (3) of the Act (Dec. at 33: 12-14), as this is contrary to the evidence in the Record as a whole and contrary to law.
188. To the failure to find as a matter of law that *Hawaii Tribune-Herald's* discipline and later discharge of Dave Smith was for cause within the meaning of Section 10(c) of the Act.
189. To the finding that Smith's suspension and discharge were caused by his protected/concerted and union activities and violated Section 8(a)(1) and (3) of the Act (Dec. at 34: 20-21), as this is contrary to the evidence in the Record as a whole and contrary to law.
190. To overruling an objection by *Hawaii Tribune-Herald* regarding an irrelevant question regarding a discussion of *Weingarten* in the March 3, 2006 Bock meeting with Smith. (Tr. 75).
191. To overruling an objection by *Hawaii Tribune-Herald* regarding an irrelevant question to Bock regarding statement during March 3, 2006 meeting with Smith about being harassed about letting employees into meetings in the past. (Tr. 76-77).
192. To sustaining an objection based on a question asked by *Hawaii Tribune-Herald* regarding why Welsh went to talk with Bock, finding witness motivation to be irrelevant. (Tr. 126).
193. To sustaining an objection based on a question asked by *Hawaii Tribune-Herald* regarding whether Welsh has ever secretly tape-recorded a source as irrelevant and striking the response. (Tr. 129).

194. To overruling an objection by *Hawaii Tribune-Herald* regarding an asked and answered question as to who contacted Welsh regarding testifying. (Tr. 139).
195. To overruling an objection by *Hawaii Tribune-Herald* regarding an asked and answered question when Welsh signed her statement. (Tr. 146).
196. To overruling an objection by *Hawaii Tribune-Herald* regarding an irrelevant question to Welsh about whether she was a member of the Guild. (Tr. 151).
197. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding Dave Smith going into a meeting on March 3, 2006 with a witness in the form of a voice recorder, against Bock's wishes finding it argumentative and/or speculative. (Tr. 545).
198. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding any decisions by the NLRB holding that *Hawaii Tribune-Herald* has unlawfully discharged an employee as it called for a legal conclusion. (Tr. 552).
199. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding any decisions by the NLRB holding that *Hawaii Tribune-Herald* discharged a bargaining unit employee without just and sufficient cause as it called for a legal conclusion. (Tr. 553).
200. To not permitting an offer of proof to be made by *Hawaii Tribune-Herald* with regards to arbitrator awards against *Hawaii Tribune-Herald* for discharging an employee without just and sufficient cause. (Tr. 554).
201. To the finding that Smith did not refuse to meet with Bock after his suspension (Dec. at 33: 42; Dec. at 44: 14), as this is contrary to the evidence in the Record as a whole.
202. To the finding that Smith was under no obligation to admit that his protected activity amounted to misconduct as a condition of his continued employment (Dec. at 34: 17-18), as this is contrary to the evidence in the Record as a whole and contrary to law.

203. To the finding that Smith was under no obligation to furnish *Hawaii Tribune-Herald* with the recorder (Dec. at 33: 37), as this is contrary to the evidence in the record as a whole and is contrary to law. (G.C. Ex. 3).
204. To the failure to find that Peter Sur gave permission to David Bock to retrieve the recorder. (Tr. 588, 1044).
205. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Smith had learned since March 3, 2006 that Bock lawfully denied Smith a union witness in the March 3, 2006 meeting with Bock, finding it called for a legal conclusion. (Tr. 529).
206. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding the Guild withdrawing a charge alleging a *Weingarten* violation involving Dave Smith, finding it irrelevant. (Tr. 534).
207. To sustaining an objection to any further lines of inquiry regarding the filing of charges by the Union regarding *Weingarten*. (Tr. 535).
208. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding whether Cahill told Smith a grievance was filed on Smith's behalf as asked and answered and/or irrelevant. (Tr. 536).
209. To rejecting R. Ex. 354: Letter from Dixon to all employees dated February 27, 2006, rejected on October 30, 2007. (Tr. 1020-1021).
210. To overruling an objection by *Hawaii Tribune-Herald* regarding an irrelevant question to Smith about Smith's participation in collective bargaining negotiations. (Tr. 468, 469, 470, 472, 475).
211. To overruling an objection by *Hawaii Tribune-Herald* regarding a question to Smith about Bishop's first suspension. (Tr. 479, 481).

212. To sustaining an objection based on a question by *Hawaii Tribune-Herald* regarding a representation agreement between Smith and any attorneys regarding the subpoena served on Smith by *Hawaii Tribune-Herald*. (Tr. 558-559).
213. To the finding that the policy promulgated and maintained since November 1, 2005 regarding buttons was justified by no special circumstances and violated Section 8(a)(1) of the Act (Dec. at 26: 12-14), as this is contrary to the evidence in the Record as a whole and contrary to law.
214. To the finding that the wearing of buttons depicting the face of Bishop was protected/concerted activity under *Republic Aviation* (Dec. at 25: 49-50), as this is contrary to law.
215. To the finding that *Hawaii Tribune-Herald's* narrow reading of *Republic Aviation*, 324 U.S. 793 (1945), would fly in the face of the Court's rationale grounded in Section 7 of the Act (Dec. at 25: 31-33), as this is contrary to law.
216. To the finding that *Five Star Transportation, Inc.*, 349 NLRB No. 8 (2007), is not apposite to the facts of this case as it does not involve a *Republic Aviation* situation (Dec. at 25: 40-42), as this is contrary to the evidence in the Record as a whole and contrary to law.
217. To the finding that *Hawaii Tribune-Herald* appears not to have a dress code policy (Dec. at 26: 7-8, 34), as this is contrary to the evidence in the Record as a whole.
218. To overruling an objection by *Hawaii Tribune-Herald* regarding an irrelevant question to Loos about a costume worn on Halloween 2004. (Tr. 702).
219. To the finding that *Hawaii Tribune-Herald's* position that it was unaware of the purpose of the buttons is not supported by the evidence (Dec. at 25: 46-47), as this is contrary to the evidence in the Record as a whole.

220. To the finding that it was clear that the buttons worn were a protest to Bishop's suspension and were an expression of their exercise of their rights guaranteed in Section 7 of the Act to engage in concerted activity for their mutual aid or protection (Dec. at 25: 34-37), as this is contrary to the evidence in the record as a whole and is contrary to law.
221. To the finding that wearing the buttons was unprotected picketing or self-help is unsupported by the case law (Dec. at 25: 39-40), as this is contrary to law.
222. To the finding that the ban on red armbands was to discourage its employees' exercise of their protected concerted activity in violation of Section 8(a)(1) of the Act (Dec. at 26 38-40), as this is contrary to the evidence in the Record as a whole and contrary to law.
223. To the finding that *Hawaii Tribune-Herald* employees in the Circulation Department decided to do something to termination, and went to the Guild Office in Hilo (Dec. at 26: 21-22), as that is contrary to the evidence in the record as a whole. (Tr. 864-66).
224. To the finding that all of the employees in the Advertising Department wore armbands to a meeting the morning of March 13, 2006, in the presence of Alice Sledge (Dec. at 12: 15-16), as this is contrary to the evidence in the Record as a whole.
225. To overruling an objection by *Hawaii Tribune-Herald* based on an irrelevant and hearsay question to Marie Ella-Burns regarding what occurred when Ella-Burns went to the Guild office on March 10, 2006. (Tr. 864-865).
226. To the finding that *Hawaii Tribune-Herald* was aware that the armbands were a protest of Smith's suspension (Dec. at 26: 35-38), as this is contrary to the evidence in the Record as a whole.

227. To overruling an objection by *Hawaii Tribune-Herald* based on a question assuming facts not in evidence to Nako regarding whether she wore an armband after Smith was terminated or suspended. (Tr. 280).
228. To rejecting R. Ex. 172: Letter from Cahill to Dixon dated April 5, 2006, rejected on October 30, 2007. (Tr. 1087).
229. To rejecting R. Ex. 193: Letter from Bock to Cahill dated April 12, 2006, rejected on October 30, 2007. (Tr. 1087).
230. To the finding that *Hawaii Tribune-Herald's* rule against surreptitious taping was an attempt to restrict its employees' exercise of their Section 7 rights and violated Section 8(a)(1) of the Act (Dec. at 27: 18-20), as this is contrary to the evidence in the Record as a whole and contrary to law.
231. To the ordered remedy that *Hawaii Tribune-Herald* cease and desist and post a remedial Board notice (See Appendix to ALJ Recommended Decision and Order) addressing the violations found (Dec. at 39: 27-28), as the findings of violations of the Act by the ALJ are contrary to the evidence in the Record as a whole and to law.
232. To the ordered remedy that *Hawaii Tribune-Herald* must offer discriminatorily discharged and suspended employees reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), (Dec. at 39: 30-34), as the findings of alleged violations are not supported by the evidence in the Record as a whole and is contrary to law.

233. To the affirmative action required of *Hawaii Tribune-Herald*, removing from its files within 14 days of the Order, any reference to the unlawful discharges of Hunter Bishop and David Smith and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way (Dec. at 40: 32-35), as the findings by the ALJ are contrary to the evidence in the Record as a whole and contrary to law.
234. To the affirmative action required of *Hawaii Tribune-Herald*, removing from its files within 14 days of the Order, any reference to the unlawful discipline of Koryn Nako dated October 26, 2005, the unlawful suspension of Peter Sur on March 9, 2006, the unlawful suspension and termination of Hunter Bishop dated respectively October 19 and 27, 2005, the unlawful discipline, suspension and termination of David Smith dated respectively March 9 and April 26, 2006, and within 3 days thereafter notify the employee in writing that this has been done and that the discipline, performance improvement plans and appraisals will not be used against him in any way (Dec. at 40: 37-44), as the findings by the ALJ are contrary to the evidence in the Record as a whole and contrary to law.
235. To the affirmative action that *Hawaii Tribune-Herald* provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and papers, and all other records, including an electronic copy of such records if stored in electronic form necessary to analyze the amount of backpay due under the terms of the ALJ's recommended Order, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown (Dec. at 40: 46-51), as the underlying findings which brought about this affirmative duty are contrary to the evidence in the Record as a whole and contrary to law.

236. To the affirmative action ordered that *Hawaii Tribune-Herald* post a notice for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted (Dec. at 41: 1-12), as the findings by the ALJ which led to this posting are contrary to the evidence in the Record as a whole and contrary to law.
237. To the affirmative action ordered that *Hawaii Tribune-Herald* file within 21 days after service by the Region, a sworn certification of a responsible official attesting to the steps *Hawaii Tribune-Herald* has taken to comply with remedies ordered (Dec. at 41: 14-16), as the allegations found violative the Act are contrary to the evidence in the Record as a whole and law.

5. Conclusion

For all of the foregoing reasons, *Hawaii Tribune-Herald* respectfully requests that the Complaint, all amendments thereto, and all underlying charges be dismissed in their entirety, that the Exceptions of *Hawaii Tribune-Herald* be granted and that the Decision of the ALJ be reversed to the extent that *Hawaii Tribune-Herald* has excepted thereto.

DATED: May 5, 2008

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing EXCEPTIONS TO THE
RECOMMENDED DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE was served, via
Federal Express on this 5th day of May 2008, on the following parties:

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